

## **REMARKS**

The Applicant has cancelled Claim 7, amended Claim 10, and added new Claims 27 - 33. Of the claims, the Applicant gratefully acknowledges the indication by the Examiner of allowable subject matter in Claims 25 and 26.

## **REJECTIONS OF THE CLAIMS UNDER §112**

The Examiner has rejected Claims 7, 15, 16, 22, and 23 under 35 U.S.C. §112 as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The Examiner states that “the specification fails to show how the arms are fastenable to the to arms are selectively fastenable to the arm at multiple locations along the arm.” The Applicant has assumed that the Examiner intended to state, “the specification fails to show how the grips are selectively fastenable to the arms....” Based on this assumption, the Applicant respectfully disagrees with the statement and rejection of the Examiner.

Claims 15 and 22 presently state “wherein the second left grip and the second right grip are selectively fastenable to the arm at multiple locations along the arm.” Claims 16 and 23 presently state “wherein the second left grip and the second right grip are selectively fastenable to the arm at multiple angles to the arm.” The Applicant respectfully asserts that the specification clearly describes how the second left grip and the second right grip are selectively fastenable to the arm at multiple locations along the arm and at multiple angles to the arm. In paragraph [0026], the specification states, “The second left grip 74 and the second right grip 76 are also preferably selectively fastenable to the arm 62 at multiple locations along the arm 62 (which accommodates vehicles of different lengths), and are selectively fastenable to the arm 62 at multiple angles to the container 12 (which accommodates roof racks with an arched second bar). The second left grip 74 and second right grip 76 are preferably coupled to the arm 62 with a second clamp 78, which allows

adjustment both along the arm 62 and at multiple angles to the arm 62....” The clamp 78 wraps around the arm 62. When loosened, the clamp allows adjustment. When tightened, the clamp fastens the grip to the arm.

For these reasons, the Applicant respectfully requests that the Examiner reconsider and withdraw these rejections under §112.

### **REJECTIONS OF THE CLAIMS UNDER §102**

The Examiner has rejected Claims 7, 10, 11, and 13-24 under 35 U.S.C. §102(a) as being anticipated by the Settlemayer et al. reference (US 6,918,521). The Applicant respectfully asserts that the Settlemayer et al. reference (1) is not a proper 102(a) reference, (2) does not teach or suggest each and every element of Claims 10, 11, and 13-24, and (3) is not prior art.

Although not provided by the Examiner, §102(a) states, “A person shall be entitled to a patent unless (a) the invention was ... patented or described in a printed publication in this ... country, before the invention thereof by the applicant for patent....” The Settlemayer et al. reference was published on 12 August 2004 and was issued on 19 July 2005. The present application was filed 29 August 2003, well before both of these dates. Consequently, the Settlemayer et al. reference is not a proper 102(a) reference. To expedite the prosecution of this application, however, the Applicant has assumed that the Examiner intended to reject Claims 7, 10, 11, and 13-24 under 35 U.S.C. §102(e).

The Settlemayer et al. reference does not teach or suggest, as stated in amended Claim 10, “an arm located on the exterior of the container and fastened to the bottom surface of the container for pivotal movement between a closed position and an open position.” As best shown in FIGS. 2-6 of the Settlemayer et al. reference, the cam lever 38 is clearly located in the interior of the carrier 20. The location of the arm on the exterior, as opposed to the interior, of the container has multiple advantages. As best explained in paragraph [0016],

“the cargo system 10 may be attached, secured, unsecured and detached from the roof rack without entering into the enclosed cavity 26 of the container 12. In this manner, the cargo system 10 may be loaded with the equipment for a particular activity, attached to a vehicle before the particular activity, and removed from the vehicle after the particular activity.”

The Settlemayer et al. reference does not teach or suggest, as stated in Claims 13, “a latch that selectively secures the arm in the closed position, thereby securing the second mount in the engaged position and securing the cargo system to the roof rack.” As best shown in FIGS. 6 of the Settlemayer et al. reference, a first oversize knob 62 turns bolt 44 to move barrel nut 46 closer to or farther away from shaft member 42, thereby providing a gross adjustment mechanism for the tightness of the clamping action. The Applicant respectfully asserts that this does not teach or suggest “a latch that selectively secures the arm in the closed position, thereby securing the second mount in the engaged position and securing the cargo system to the roof rack”, but rather a mechanism to adjust how the cam lever 38 pivots around shaft member 42 and to adjust the opening and closing of movable jaw portion 50 relative to stationary jaw portion 52 when cam lever 38 is rotated.

The Settlemayer et al. reference does not teach or suggest, as stated in Claims 17, “an arm coupled to the container for linear movement between a closed position and an open position and coupled to the second mount, wherein linear movement of the arm from the closed position to the open position causes movement of the second mount from an engaged position to a disengaged position, and wherein linear movement of the arm from the open position to the closed position causes movement of the second mount from the disengaged position to the engaged position.” As best shown in FIGS. 5 of the Settlemayer et al. reference, bolt 44 passes from the inside of car top carrier 20 to the outside through floor 32 of carrier bottom 30 via slot 66 which is aligned with the long axis of car top carrier 20. Slot 66 allows adjustment of the location of clamp 34 along the long axis of car top carrier 20. Slot 66 allows for adjustment but does not teach or suggest “linear movement between a

closed position and an open position and coupled to the second mount, wherein linear movement of the arm from the closed position to the open position causes movement of the second mount from an engaged position to a disengaged position.”

To expedite the prosecution of this application, the Applicant further submits the attached Declaration of the Inventor Under 37 C.F.R. §1.131. The Declaration evidences the conception of the subject matter of Claim 10, 11, and 13-24 before 28 January 2003 (the priority date of the Settlemayer et al. reference). Please note the resemblance of the drawings on page 8 of Appendix A to FIGS. 8a and 8b, of the drawings on page 7 of Appendix B to FIGS. 6a and 6b. The Declaration also evidences the reasonable diligence by the inventor from the conception date of the invention (before 28 January 2003) to the filing date of an application on this subject matter (on 29 August 2003). Thus, the Applicant respectfully asserts that the Settlemayer et al. reference is not prior art under 35 U.S.C. §102(e).

For these reasons, the Applicant respectfully requests that the Examiner reconsider and withdraw these rejections under §102.

### **REJECTIONS OF THE CLAIMS UNDER §103**

The Examiner has rejected Claim 12 under 35 U.S.C. §103 as being unpatentable over the Settlemayer et al. reference (US 6,918,521). The Applicant asserts that the Examiner has not established a *prima facie* case because the reference does not teach or suggest each and every element of Claim 12, and that the Settlemayer et al. reference is not prior art.

In particular, the reference does not teach or suggest the “arm fastened to the container for pivotal movement between an open position and a closed position..., wherein pivotal movement of the arm from the open position to the closed position biases the first mount against the first bar in a first direction and biases the second mount against the second bar in a second direction opposite to the first direction” of Claim 12. This difference is best

shown by a comparison of the drawings of the present invention and the drawings of the references. As shown in FIGURES 6A and 6B of the present invention, the cargo system 10 of the preferred embodiments also includes an arm 62 coupled between the second mount 16 and the container 12 for movement between a closed position (shown in FIGURE 6A) and an open position (shown in FIGURE 6B). Movement of the arm 62 from the closed position to the open position preferably causes movement of the second mount 16 from the engaged position to the disengaged position, which allows placement of the first mount 14 onto the first bar 20 and placement of the second mount 16 onto the second bar 22 (preferably without decoupling the first mount 14 or the second mount 16 from the container 12). Further, movement of the arm 62 from the open position to the closed position preferably causes movement of the second mount 16 from the disengaged position to the engaged position, which biases the first mount 14 against the first bar 20 and biases the second mount 16 against the second bar 22. Because of the movement restriction imposed by the first mount 14 and the second mount 16, the act of biasing the first mount 14 against the first bar 20 and biasing the second mount 16 against the second bar 22 in an opposite direction attaches the cargo system 10 to the roof rack. As best shown in FIGS. 3 and 4 of the Settlemayer et al. reference, the cam lever 38 pivots around shaft member 42 as shown. The shape of cam portion 40 and the position of shaft member 42 causes opening and closing of movable jaw portion 50 relative to stationary jaw portion 52 when cam lever 38 is rotated between different positions.

The Examiner stated that "It would have been obvious to one of ordinary skill in the art to position the various locking means of Settlemayer in opposite directions to enable one to lock the container in the various positions. The Applicant respectfully asserts that by positioning the various locking means of Settlemayer in opposite directions, the mechanism of action would not be changed, the movable jaw portion 50 would close around the crossbars 22 in the same fashion. This does not teach or suggest "bias[ing] the first mount against the first bar in a first direction and bias[ing] the second mount against the second bar in a second direction

opposite to the first direction.”

Further, the Applicant respectfully points the Examiner to FIGS. 2, 3, and 4 of the Settelmayer et al. reference. As described in the detailed description of the Settelmayer et al. reference, an “arrow 64 indicates the direction of forward travel of vehicle 26. Movable jaw portion 50 preferably is oriented to open in the forward direction to make carrier 20 less likely to be dislodged from vehicle 26 in a high-impact forward collision.” Therefore, the Settelmayer et al. reference teaches away from “position[ing] the various locking means... in opposite directions to enable one to lock the container in the various positions”.

To expedite the prosecution of this application, the Applicant further references the attached Declaration of the Inventor Under 37 C.F.R. §1.131. The Declaration evidences the conception of the subject matter of Claim 12 before 28 January 2003 (the priority date of the Settelmayer et al. reference). Please note the resemblance of the drawings on page 7 of Appendix B to FIGS. 6a and 6b. The Declaration also evidences the reasonable diligence by the inventor from the conception date of the invention (before 28 January 2003) to the filing date of an application on this subject matter (on 29 August 2003). Thus, the Applicant respectfully asserts that the Settelmayer et al. reference is not prior art under 35 U.S.C. §103(a).

For these reasons, the Applicant respectfully requests that the Examiner reconsider and withdraw these rejections under §103.

## **CONCLUSION**

In view of the preceding amendments and remarks, the Applicant respectfully submits that all of the claims are now in condition for allowance. Further, the Applicant respectfully requests that the Examiner consider and allow the new Claims 27 – 33. If the Examiner believes that personal contact would be advantageous to the disposition of this case, the

Applicant respectfully requests that the Examiner contacts the Attorney of the Applicant at the earliest convenience of the Examiner.

Respectfully submitted,

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